

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

VICTORIA CAREY, MARIE BURRIS,
MICHAEL KISER, BRENT NIX, and
ROGER MORTON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

THE CHEMOURS COMPANY FC, LLC,
THE CHEMOURS COMPANY, E.I.
DUPONT de NEMOURS AND COMPANY,
INC., E.I. DUPONT CHEMICAL
CORPORATION, ELLIS H. MCGAUGHEY,
and MICHAEL E. JOHNSON,

Defendants.

Civil Action No. 7:17-cv-00189-D
Civil Action No. 7:17-cv-00197-D
Civil Action No. 7:17-cv-00201-D

**DEFENDANTS' MOTION TO EXCLUDE TESTIMONY OF
KIMBERLY A. GRAY, PH.D. AND ROGER W. GRIFFITH, P.E.**

Defendants respectfully move the Court to exclude the expert opinions of Kimberly A. Gray, Ph.D. and Roger W. Griffith, P.E. under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).¹ Dr. Gray's and Mr. Griffith's opinions should be excluded because their opinions are not reliable. Plaintiffs rely on the opinions of Dr. Gray and Mr. Griffith to support their claim that all putative class members must receive reverse-osmosis water filters and replacement of their hot-water heaters to protect them from the dangers of PFAS exposure.

Dr. Gray is a toxicologist who opined bacteria and biofilm in the water sources contain

¹ Through this motion, Defendants are challenging only opinions relevant to Plaintiffs' Motion for Class Certification. Defendants reserve the right to later challenge any other opinions.

proteins that bind PFAS to pipes and water heaters in areas that receive water from private wells in the affected counties or from the Cape Fear River. Dr. Gray's opinions are purely speculative, theoretical, and directly inconsistent with the assumptions made in her hypothesis. The stark discrepancy between Dr. Gray's assumptions and the facts at issue in this case renders her opinions unreliable.

Mr. Griffith is a forensic mechanical engineer who opines that incoming water contaminated with "Fayetteville Works PFAS" contaminates the sediment layer in water heaters in a similar concentration as in the incoming water," that "no methodology currently exists that will completely remove all sediment from a residential water heater," and that "the replacement of contaminated water heaters is the only approach that can fully eliminate the risk of Fayetteville Works PFAS contamination from water heaters." However, his opinion that incoming water contaminated with "Fayetteville Works PFAS" contaminates the sediment layer in water heaters is not based on any actual data measuring PFAS contained in alleged sediments inside water heaters—only limited data measuring PFAS out of the tap in a liquid media that Mr. Griffith assumes must come from sediment within the water heaters. In addition, his opinion that "no methodology currently exists that will completely remove all sediment from a residential water heater" ignores key data to the contrary, relies on non-PFAS data, and omits key analysis that could have confirmed or disproven his theory. Finally, his opinion that "the replacement of contaminated water heaters is the only approach that can fully eliminate the risk of Fayetteville Works PFAS contamination from water heaters" is based on the unsupported assumption that any level of PFAS presents a risk to human health and based on an analytical framework that attempts to improperly reverse the burden of proof in this case.

For the foregoing reasons and those set out more particularly in Defendants'

accompanying memorandum, Defendants respectfully request that this Court exclude the opinions of Kimberly A. Gray, Ph.D. and Roger W. Griffith, P.E. and grant any further relief deemed proper and just.

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Dated: July 13, 2022

Respectfully submitted,

/s/ Thomas H. Segars

Kenneth J. Reilly
SHOOK, HARDY AND BACON, LLP
201 S. Biscayne Blvd
3200 Citigroup Center
Miami, FL 33131
Phone: 305-358-5171
Fax: 305-358-7470
kreilly@shb.com

Britta N. Todd
SHOOK, HARDY AND BACON, LLP
2555 Grand Blvd.
Kansas City, MO 64108
Phone: 816-559-2487
Fax: 816-421-5547
btodd@shb.com

Joshua Becker
SHOOK, HARDY AND BACON, LLP
1230 Peachtree Street, Suite 1200
Atlanta, GA 30309
Phone: 470-867-6000
Fax: 470-867-6001
jbecker@shb.com

Thomas H. Segars
N.C. State Bar No. 29433
Scottie Forbes Lee
N.C. State Bar No. 50833
ELLIS & WINTERS LLP
P.O. Box 33550
Raleigh, NC 27636
Phone: 919-865-7000
Fax: 919-865-7010
tom.segars@elliswinters.com
scottie.lee@elliswinters.com

Attorneys for Defendants